

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket
No. 05-311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF THE TOWN OF ESOPUS

These Comments are filed by The Town of Esopus in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, The Town of Esopus believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a FRANCHISE. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

The Town of Esopus is a town with a population of 9,500. Our franchise cable provider is Time Warner Cable. Our community has negotiated cable franchises since 1959.

Our Current Franchise

Our current franchise began on March 11, 1959 and has lately expired. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider, although our town is not actively involved in negotiations.

Our franchise requires the cable operator to pay a franchise fee to the the Town of Esopus in the amount of 3% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; no channels (or capacity) devoted to educational access; and no channels (or capacity) devoted to government access. Public Access is controled by a board of representatives from 4 town and 1 city served by municipal agreement with Time Warner Cable.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: The Cable operator initially provided space and equipment but no funds are provided for operating expenses. A franchise fee was to be collected, up to 5%, on the total cable revenue collected by TWC which would be turned over to the towns and distributed or not as deemed necessary. Not every town chose to collect these fees. The Town of Esopus currently does not collect the franchise fee.

Our franchise does not contain any requirement regarding emergency alerts. This requirement would be a welcome addition to our franchise.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The cable operator shall investigate and resolve complaints as expeditiously as possible. The cable provider shall stay abreast of the latest developments in the state of the art services. The cable provider shall conform to all laws, rules and regulations of the United States of American and the State of New York. The cable provider shall repair any and all streets and public ways which are disturbed or damaged during construction, operation, maintenane or reconstruction of the Cable Communications System. Senior Citizens would be allowed a 25% reduction in the first and additional outlet charges.

Our original franchise contains the following reasonable build schedule for the cable operator: The cable operator is granted the non-exclusive right, privilege and authority to construct, maintain and operate a system of audio and television and digital transmissions within the corporate limits of the Town of Esopus. Said grant of authority shall constitute both a right and an obligation to provide the services of a cable communications system as required by the provisions of this franchise.

Our franchise requires that the cable operator currently provide service to the following areas of our community: The cable provider shall provide service wherever there exists a population density of forty (40) homes per mile or more.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: Nothing herein shall prohibit the provider, if it be economically and technically feasible, to provide interconnection facilities to connect the system with any and all other cable systems in the area for the purpose of obtaining the above densities.

Our franchise contains a "most favored-nations" provision which states the following: The cable operator is granted the non-exclusive right, privilege and authority to construct, maintain and operate a system of audio and television and digital transmissions within the corporate limits of the Town of Esopus.

Our franchise contains the following insurance and bonding requirements: The cable provider shall carry adequate insurance for liability, bodily injury or death, and workmen's compensation and to indemnify, protect and save harmless the Town of Esopus. The Town shall have the right to inspect and review certified copies of insurance policies.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. The cable provider is required to diligently secure all regulatory licenses, approvals and pole attachment agreements necessary. The Town of Esopus shall cooperate fully and assist the cable provider in whatever way possible to obtain necessary licenses or approvals

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: In order to maintain continuity and flexibility in performing the obligations contained herein, the parties shall be available for negotiation and discussion at least twice each year to discuss any major regulatory or technical problem, rate structure, system performance, or similar issues.

The Franchising Process

The cable system serving our community also serves many adjoining communities: *Kingston, Ulster, Hurley, Woodstock.*

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Amendments to the Franchise Agreement shall be filed with the NY State Commission on Cable Television in joint application of the cable provider and the town.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: Amendments to the Franchise Agreement can be made upon application from the cable provider and the the passage of a resolution by the Town Board after a public hearing which has been properly advertised.

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service.

However, our cable provider, who has refused service to residents in our town due to the density requirement, was asked by the town to allow another cable

provider, Cablevision of Wappingers Falls which services the Town of LLOYD, to be granted a cable franchise in order to service approximately 31 households who currently did not receive service from the franchised cable operator. Upon approval for the New York State Public Service Commission, and after a public hearing held on April 21, 2005, a mutually acceptable non-exclusive cable franchise agreement was entered upon between the parties. This negotiation took place over the course of several months.

Conclusions

The local cable franchising process functions well in The Town of Esopus. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Town of Esopus therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

The Town of Esopus

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